IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5284 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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I.R.BABUJIWALA - Petitioner(s)
Versus
THE STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR BIPIN P JASANI for Petitioner(s) : 1,
Mr. Amit Patel, AGP for Respondent(s) : 1 - 2.
NOTICE SERVED for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 25/07/2007

ORAL JUDGMENT

1. Rule. Service of notice of rule is waived by learned AGP Mr. Amit Patel on behalf of the

respondent State Authority. In the facts and circumstances of the case and with consent of both the learned Advocates, matter is taken up for final hearing today.

2. Heard learned Advocate Mr. BP Jasani for petitioner and Mr. Amit Patel, learned AGP for State Authority.

3. Proposal for obtaining NOC for the post of Vidya Sahayak was made by petitioner on 21.8.2006. The District Education Officer granted NOC for recruitment of Vidya Sahayak on 3.8.2006. Thereafter, on 28.10.2006, public advertisement was given in Sandesh Daily News Paper inviting applications. ON 5.12.2006, duly constituted selection committee selected respondent no.4 for the post of Vidya Sahayak and on 7.12.2006, respondent no.4 came to be appointed as Vidya Sahayak having qualification of B.Com., BP Ed and respondent no.4 resumed duty on 12.12.2006. Thereafter, on 15.12.2006, proposal was made by the petitioner to the District Education Officer for necessary approval but on12.2.2007, the District Education Officer informed the

petitioner that according to the decision given by the Full Bench of this Court wherein in is held that the trained Graduate cannot be appointed as Vidya Sahayak and, therefore, no approval can be granted and, therefore, petitioner was informed by the said letter to obtain NOC a fresh for filling up the said post and to initiate process for interview accordingly.

4. Learned Advocate Mr. Jasani for petitioner submits that the NOC was granted by the District Education Officer and accordingly, process for selection of Vidya Sahayak was carried out by the petitioner wherein respondent no.4 came to be selected and appointed. He submits that at that time, the District Education Officer has not considered that the respondent no.4 is not a trained teacher as per the decision of the Full Bench of this Court. Learned Advocate Mr. Jasani further submitted that the decision is given by the Full Bench on 8.1.2007 and before that, NOC was granted by the District Education Officer, process of selection was over and appointment

order was issued in favour of respondent no.4 and he took over charge prior to the decision of the Full Bench of this Court. Therefore, learned Advocate Mr. Jasani raised legal contention that the decision of the Full Bench of this Court cannot have retrospective effect but it will be having prospective effect, otherwise, it would have been clarified by the Full Bench. He also submits that the judgment delivered by this court must specify as to whether it is having prospective effect or retrospective effect and if it has not been clarified, then, it has to be construed that the same is having only prospective effect and therefore, action or the decision which has been taken prior to the decision of the Full Bench of this Court on the Basis of the NOC granted by the District Education Officer cannot be tested or disturbed on the basis of the subsequent decision of the Full Bench of this Court.

5. Mr. Amit Patel has argued while supporting the decision of the District Education Officer but he has not been able to point out that the

decision of the Full Bench of this Court is having retrospective effect. In this matter, in response to the notice issued by this court, respondent State Authority has not filed any affidavit in reply.

6. I have considered the submissions made by both the learned Advocates. I have perused the documents on record, more particularly NOC granted by the District Education Officer dated 3.10.2006. From perusal of the NOC dated 3.10.2006, it does not appear that it is subject to the decision that may be given by the Full Bench of this Court. NO such rider has been incorporated in the NOC. Therefore, when entire exercise has been carried out by the petitioner on the basis of the NOC granted by the District Education Officer and when the process of selection was completed by the duly constituted selection committee and after such process, respondent no.4 was selected and appointed and took over the charge of the post of vidya sahayak prior to the decision of the Full Bench of this Court, now, according to the opinion of

this court, it is not proper on the part of the District Education Officer to refuse the approval for appointment of respondent no.4 on the said ground since the decision of the Full Bench of this Court is not having retrospective effect. If the decision of Full Bench is having retrospective effect,then, all the trained graduates who are appointed as Vidya Sahayaks/primary teachers in the State will have to go home but that is not the real effect given by the State Government.

7. Decision of the Court may have retrospective effect for the respective parties but for others, it is prospective. View taken by the apex court in PV George and others versus State of Kerala and others (2007) 1 SCC (L&S) 823 in para 22 and 25, is reproduced as under:

“22. The effect of declaration of law, the rule of st are decisis and the consequences flowing from a departure from an earlier decision have been considered in great details by the House of Lords in National Westminster Bank Plc. v. Spectrum Plus Ltd. [2005 UKHL 41 : (2005) 3 WLR 58] opining;

'8. People generally conduct their affairs on the basis of what they understand the law to be.

This 'retrospective' effect of a change in the law of this nature can have disruptive and seemingly unfair consequences. 'Prospective overruling' sometimes described as non-retroactive overruling' is a judicial tool fashioned to mitigate these adverse consequences. It is a shorthand description for court rulings on points of law which, to great or lesser extent, are designed not to have the normal retrospective effect of judicial decisions.

9. Prospective overruling takes several different forms.In its simplest form prospective overruling involves a court giving a ruling of the character sought by the bank in the present case. Overruling of this simple or pure type has the effect that the court ruling has an exclusively prospective effect. The ruling applies only to transactions or happenings occurring after the date of the court decision. All transactions entered into, or events occurring before that date continue to be governed by law as it was conceived to be before the court gave its ruling.

10. Other forms of prospective overruling are more limited and selective in their departure from the normal effect of court decisions. The ruling in its operation may be prospective and additionally retrospective in its effect as between the parties to the case in which the ruling is given. Or the ruling may be prospective and additionally retrospective as between the parties in the case in which the ruling was given and also as between the parties in any other cases already pending before the courts. There are other variations on the same theme.

11. Recently Advocate General Jacobs suggested an even more radical form of prospective overruling. He suggested that the retrospective and prospective effect of a ruling of the European Court of Justice might be subject to a temporal limitation that the ruling should not take effect until a future date, namely, when the State had had a reasonable opportunity to introduce new legislation : Banco Popolare di

Cremona v. Agenzia Entrate Ufficio Cremona [Case C-475 of 2003 dated 17.3.2005] paras 72-88.'

[See also Lord Rodger of Earlsferry : A times for Everything under the Law; Some Reflections on Retrospectivity (2005) 121 LQR 55,77.].

23.xxx

24.xxx

25.In service matters, this court on a number of occasions have passed orders on equitable consideration. But the same would not mean that whenever a law is declared, it will have an effect only because it has taken a different view from the earlier one. In those cases it is categorically stated that it would have prospective operation."

8. Therefore, in view of the above facts, order of the District Education Officer, Vadodara daed 12.2.2007 is hereby quashed and set aside with a direction to the District Education Officer Vadodara to grant approval for appointment of respondent no.4 within one month from the date of receipt of copy of this order. Rule is made absolute in terms indicated herein above with no order as to costs.

9. Direct Service is Permitted.

(H.K. Rathod,J.)

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